COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company for Approval of a Rate Settlement.	)))))	D.T.E. 05-85

PETITION TO INTERVENE OF THE CAPE LIGHT COMPACT

Pursuant to 220 CMR §1.03(1), the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"), hereby respectfully petition the Department of Telecommunications and Energy (the "Department") for leave to intervene in D.T.E. 05-85. In support of this Petition, the Compact states as follows:

1. The Cape Light Compact is a governmental aggregator under G.L. c. 164, §134 and consists of the twenty-one towns in Barnstable and Dukes Counties, as listed above, as well as the two counties themselves. It is organized through a formal Inter-Governmental Agreement (the "Compact Intergovernmental Agreement") signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, §4A. The Compact's Aggregation Plan was approved by the Department in DTE 00-47. The Compact maintains a business office within the Barnstable County offices located at the Superior Courthouse at 3195 Main Street in Barnstable, MA 02630.

2. The purposes of the Compact include, among other things, (1) to negotiate the best rates for the supply and distribution of electricity for consumers on Cape Cod and the Islands; (2) to advance consumer protection and interests for the residents of Cape Cod and the Islands; (3) to improve quality of service and reliability; and (4) to utilize and encourage renewable energy development. Compact Intergovernmental Agreement at Article I. Toward that end, the Compact presently operates a municipal aggregation competitive supply program, which provides electric power supply on an opt-out basis to roughly 183,000 customers across all customers classes who are located within the Compact's service territory and would otherwise be served as default service customers. The Department approved the Compact's form of universal service competitive electric supply agreement in D.T.E. 04-32, pursuant to which the Compact has entered into supply agreements with Consolidated Edison *Solutions*, Inc., which now run through January 31, 2007.[1]

3. On December 6, 2005, the Department of Telecommunications and Energy (the "Department") received a Joint Motion for Approval of Settlement Agreement (the "Motion") of Boston Edison Company ("Boston Edison"), Cambridge Electric Light Company ("Cambridge"), Commonwealth Electric Company ("Commonwealth" and collectively, along with Boston Edison and Cambridge, "NSTAR Electric"), NSTAR Gas Company (together with NSTAR Electric, "NSTAR"), the Attorney General of Massachusetts, the Low-Income Energy Affordability Network and Associated Industries of Massachusetts (collectively, the "Settlement Parties"). The Motion seeks approval of a Settlement Agreement (the "Settlement Agreement") that intends to resolve certain issues with regard to a base

[1] The Compact also operates an Energy Efficiency Plan ("EEP"): Phase I of the EEP was approved by the Department in D.T.E. 00-47C; Phase II of the EEP was approved in D.T.E. 03-39; and Phase III of the EEP was approved in D.T.E. 05-34.

rate case that NSTAR was planning to file with the Department. The Settlement Parties filed roughly 2,440 pages of exhibits in support of the Motion.[2] The Motion states that the Settlement will be withdrawn if the Department fails to approve the Settlement in its entirety by December 30, 2005.

4. On December 8, 2005, the Department published public notice of public hearings on the Settlement to be held on December 29, 2005, together with notice of the deadline for intervention or participation in the proceeding by interested parties.

5. The Settlement provides for (1) NSTAR Electric rate changes on January 1, 2006 and May 1, 2006, (2) a performance-based rate mechanism for NSTAR Electric beginning January 1, 2007 and extending through December 31, 2012, (3) NSTAR Gas rate changes on January 1, 2006, (4) an expansion of NSTAR Electric's storm fund, (5) the implementation of new procurement programs for NSTAR Electric default service customers, (6) the implementation of a fixed-price option for NSTAR Gas residential and small commercial default service customers, (7) the implementation of service quality, safety and reliability programs, (8) the implementation of a low-income arrearage management program, and (9) the preparation of annual capital projects scheduling lists.

6. More specifically, and of particular relevance to this Petition, the Settlement would, among other things: (1) alter distribution rates and transition charges for residents of Cape Cod and the Islands; (2) allow Commonwealth to merge, together with Cambridge and Canal Electric Company, with and into Boston

[2] This number excludes the additional pages associated with 12 exhibits that are listed in the Exhibit List attached to the Joint Motion but do not appear to have been posted on the Department's website. Nor does this number include several rounds of voluminous discovery documents that that have been filed in the brief period since filing of the Motion.

Edison; (3) notwithstanding the other rate settlement provisions of the Settlement, allow NSTAR Electric to seek uniform tariffs across the Boston Edison, Cambridge and Commonwealth service territories; (4) require the implementation of service quality, safety and reliability programs that ignore service quality matters important to residents of Cape Cod and the Islands; (5) alter the process by which Commonwealth procures default service; (6) fail to modify the default service adjustment tariff; and (6) fail to ensure that the exemption from stand-by distribution rates for renewable distributed generation becomes a part of this settled general rate case.

7. Commonwealth is the local distribution company providing distribution service to all of the customers within the Compact's member municipalities and providing default service to customers within the Compact's member municipalities who opt out of the Compact's aggregation program.

8. As more specifically alleged below, decisions made by the Department in this proceeding, particularly those affecting Commonwealth, will substantially and specifically affect the Compact, its municipal aggregation program and the interests of residents of Cape Cod and the Islands that the Compact is charged with advancing.

9. The provisions of the Settlement relating to Commonwealth's distribution rates and transition charges will substantially and specifically affect the Compact in its capacity as both an association of ratepayers and as a representative of municipal, residential and commercial ratepayers on Cape Cod and the Islands. The Settlement would guaranty annual increases in distribution rates paid by Cape Cod and Islands customers without any cost justification while those increases would be hidden by illusory decreases in Commonwealth's transition charges. Collection of a

portion of transition charges would apparently be deferred through 2012 (subject to exceptions that should be fully explored in this proceeding), but any deferred Commonwealth transition charges would simply be recovered from Commonwealth ratepayers – with interested accumulated at an exorbitant 10.88% interest rate – after 2012.

10. The Compact acknowledges that ratepayers in other NSTAR service territories should have concerns in common with those of ratepayers on Cape Cod and the Islands with respect to distribution rates and transition charges, and that the Attorney General has the obligation to represent the common concerns of all ratepayers in the Commonwealth of Massachusetts in Department proceedings. See, e.g., Petition of Boston Edison Company, D.T.E. 04-61, Hearing Officer Ruling on Petition to Intervene and Amended Petition for Limited Participant Status at 4 (Sept. 30, 2004). In this proceeding, however, the Attorney General is already a party to the Settlement and the Attorney General and NSTAR have jointly moved for expedited approval of their Settlement. Manifestly, the Attorney General cannot adequately represent the interests of those ratepayers in any NSTAR service territory – much less the interests of Commonwealth's customers within the Compact service area – who seek appropriate scrutiny of the Settlement.

11. The provisions of the Settlement allowing a merger of Commonwealth with other NSTAR companies, authorizing an increase in the storm reserve fund without requiring the fund to cover storm events in the Commonwealth service area, and contemplating the implementation of uniform tariffs across the NSTAR companies' service territories substantially and specifically affects the Compact in its capacity as both an association of ratepayers and as a representative of municipal,

residential and commercial ratepayers on Cape Cod and the Islands. While the Settlement appears to use the merger to justify an increase of the existing storm fund from $8 million to $13.5 million, the Settlement would not expand the use of the fund to cover storm events on Cape Cod and the Islands. In addition, the merger is the first step toward uniform tariffs and uniform tariffs raise the possibility that customers on Cape Cod and the Islands will be forced to pay a disproportionate share of costs relating to the provision of distribution service to customers in other territories. At the very least, the Settlement should condition approval of the merger on an expansion of the storm fund to cover storm events in any NSTAR territory and on the principle that any tariffs proposed by NSTAR Electric must not inappropriately allocate costs of service. The Attorney General cannot adequately represent the interests of Commonwealth customers within the Compact service area on this issue because, as noted above, the Attorney General is already a party to the Settlement and Motion and, even if that were not the case, the Attorney General would be seeking to maximize average benefits to ratepayers, not to guard against disproportionate burdens being placed on consumers on Cape Cod and the Islands.

12. The provisions of the Settlement relating to service quality, safety and reliability substantially and specifically affect the Compact's ability to fulfill its purpose of improving service quality and reliability for municipalities, residents and businesses on Cape Cod and the Islands. For example, because the Capital Projects Scheduling List is restricted to certain items (*i.e.*, stray voltage, double poles and manholes), Settlement § 2.25, the Settlement would not require any maintenance or upgrading of the unreliable transmission cables from the mainland to Martha's Vineyard. Nor does the Settlement adequately address the serious concerns of local

emergency response agencies on the outer Cape regarding the gross inadequacy of Commonwealth's emergency management procedures.[3]

13. The provisions of the Settlement relating to procurement of default service for residential customers will substantially and specifically affect the Compact's ability to successfully continue its municipal aggregation competitive supply program. Currently, NSTAR must procure 50% of its basic service supply semi-annually for one-year terms. D.T.E. 02-40-B. The Settlement would require NSTAR to procure 50% of its basic service supply for one-year terms, 25% of its load for two-year terms and 25% of its load for three-year terms. Such alteration of procurement practices is not likely to result in lower default service prices for default service customers on Cape Cod and the Islands but would inappropriately allow Commonwealth to offer a residential retail generation service product (*i.e.*, a price stabilized product) that should instead be available only in the competitive marketplace, either through the Compact's municipal aggregation program or directly by competitive suppliers. Thus, allowing Commonwealth to provide a price stabilized product to consumers on Cape Cod and the Islands will substantially and specifically affect the Compact.

14. The failure of the Settlement to address issues that could and should have been addressed in a general rate case also substantially and specifically affects the Compact. For example, a general rate case could and should have reexamined Commonwealth's default service adjustment tariff, a tariff that allows Commonwealth, to the significant detriment of the Compact and competitive suppliers, to charge anti-competitive below-market prices for default service and then

[3] Some of these concerns were articulated by Town of Orleans Fire Chief and Emergency Manager Steven P. Edwards in his December 12, 2005 letter to Chairman Alfonso.

simply collect unrecovered default service costs for all customers in base rates. See D.T.E. 05-89, Initial Comments of the Cape Light Comment (December 20, 2005). In D.T.E. 05-89, Commonwealth is effectively seeking to force its ratepayers to retroactively subsidize 2005 default service rates by roughly $0.011245 per KWH (to account for an aggregate under recovery of 2005 default service costs of $20,033,000). Id. Commonwealth's 2005 residential default service rate was nearly identical to that offered through the Compact's competitive supply program, but the evidence in D.T.E. 05-89 indicates that, if it had set its 2005 rates in accordance with its costs, Commonwealth's 2005 residential default service rate would have been roughly 16% higher than the rate offered through the Compact. Id. Maintenance of the default service adjustment tariff directly harms the Compact and results in imposition of an unwarranted multi-million dollar penalty on all customers within the Compact's municipal aggregation program, each of whom are actively participating in a competitive retail generation market in precisely the manner contemplated by Chapter 164 of the Acts of 1997 (the "Restructuring Act"). The Compact would be substantially and specifically affected by the approval of a Settlement that did not address Commonwealth's default service adjustment tariff.

15. In addition, a general rate case could and should have confirmed the continuation of the exemption from stand-by distribution charges of customers with on-site renewable generation, and any reasonable settlement of a general rate case should likewise address such issues. Indeed, in D.T.E. 02-131, the Attorney General conditioned his support of the settlement in that case on the condition that a more permanent standby rate design be developed in the context of the next general rate case. D.T.E. 02-131 at 25 (July 23, 2004). One of the Compact's enumerated

purposes is to utilize and encourage renewable energy development and the Compact is indeed working to facilitate the development of renewable on-site generation facilities on municipal and institutional property on Cape Cod and the Islands. The Compact would be substantially and specifically affected by the approval of a Settlement that did not confirm the continued exemption of on-site renewable generation from Commonwealth's stand-by distribution charges.

16. The Compact's intervention will not unduly burden NSTAR, the Department or any of the parties that filed or may intervene in this proceeding, in that the Compact will not introduce duplicative or repetitive material and will cooperate in ensuring a speedy and efficient proceeding.

STATEMENT OF PETITIONER'S CLAIMS

17. The Settlement cannot be approved unless the Department finds that the Settlement, in light of the entire record, is consistent with applicable law, including relevant provisions of Restructuring Act and Department precedent, as well as the public interest, Boston Edison Company, D.P.U./D.T.E. 96-23 at 13 (1998), and that the Settlement will result in a just and reasonable outcome, Bay State Gas Company, D.P.U./D.T.E. 95-104 at 15 (1995). If allowed to intervene, the Compact will contend that, in its current form, the Settlement is contrary to the public interest and would not result in a just and reasonable outcome. Below is a summary of the Compact's anticipated contentions, based on its review of the filing to date:

18. The Settlement is contrary to the public interest because it further postpones a general rate case necessary to update and rationalize rates and hold Commonwealth and the other NSTAR companies accountable for fulfilling their obligations to ratepayers. A general rate case is long overdue with respect to NSTAR

Electric. As Commissioner Manning aptly noted in her dissenting opinion in D.T.E. 03-121, the "last litigated rate case for [NSTAR] was in 1986," nearly *twenty years ago* and more than a decade before the 1997 restructuring of the electric industry in Massachusetts and prior to a significant corporate merger and various regulatory settlements. D.T.E. 03-121 at 56 (July 23, 2004) (dissent of Commissioner Deirdre Manning). NSTAR's current rates "are likely not cost based" and its returns on equity in recent years (the same range of return on equity sanctioned by the Settlement) "are much higher than the Department allowed rate of return from the early nineties," and "are even higher than one would expect from a [monopoly utility] company that no longer bears the risks from owning generation assets." *Id.* A general rate case would have provided the Department and other interested parties the opportunity to apply rigorous scrutiny to the costs, revenues and activities of a private entity with a valuable monopoly in a vastly different regulatory framework. In the absence of a general rate case, it will be critical to secure appropriate scrutiny of the Settlement by the Department and other interested parties.

19. The Settlement is contrary to the public interest because it would not result in the "rate relief" claimed by NSTAR, the Attorney General and the other Settlement Parties. It appears that under the Settlement, real increases in distribution rates would be hidden by illusory decreases in transition charges. Customers would ultimately receive no overall reduction in transition charges. Collection of a portion of transition charges would apparently be deferred through 2012 (subject to exceptions that should be fully explored in this proceeding), but any deferred transition charges would be recovered from ratepayers, with accumulated interest,

after 2012. In essence, customers would be borrowing from themselves to pay NSTAR's shareholders more today.

20. The Settlement is contrary to the public interest because it does not provide "long-term price stability for customers," as claimed in NSTAR's December 6, 2005 letter to the Department. The Settlement would allow automatic annual distribution rate increases and the flow-through of numerous and unprecedented costs, including the costs of services already included in NSTAR's rates (*e.g.*, removal of dangerous double poles, prevention of stray voltage that has resulted in electrification of pets). Following the period of automatic increases and flow-throughs, customers would be hit by the accumulated deferral of transition costs, including at least $50 million deferred in 2006, plus additional deferrals every year under an "Inter-rate Stabilization Adjustment" that reduces transition charges to *temporarily* offset distribution rate increases. In addition, the illusory nature of the purported rate relief and long-term price stability is further underscored by the fact that, if at any point NSTAR is acquired by a third party, NSTAR (and presumably its successor) can simply terminate the Settlement without cause and walk away from all of its commitments. Settlement § 2.7.

21. The Settlement is contrary to the public interest because it would drastically reduce regulatory oversight. The Settlement would guaranty NSTAR distribution rate increases every year through 2012 whereas ordinarily NSTAR would have had to file for a rate increase and justify each increase with sufficient evidence that the rate increase is necessary in order to allow the company to recover its prudently incurred costs plus a reasonable rate of return. Rather than give up something for this extraordinary allowance, NSTAR is simply agreeing to collect a

portion of its transition costs at a later time plus an unreasonable amount of interest on the deferred cost recovery.

22. The Settlement appears to be contrary to the public interest and contrary to law because it unnecessarily and illegally extends and increases the deferral of transition charges. The Restructuring Act only allows recovery of approved transition costs from ratepayers if "collected over a *specific period of time* on a non-bypassable basis and in a manner that *does not result in an increase in rates* to customers." Restructuring Act, § 1(u) (emphasis added); *see also* G.L. c. 164, § 1G(e). The continued deferral of transition costs with the return of full transition charges in 2012 may also violate the prohibition that "in no event shall the department determine to allow any carrying costs for any period beyond the year 2009 on any unamortized balance of costs" of generation assets that were being recovered in rates as of January 1, 1997 or of nuclear entitlements. G.L. c. 164, § 1G(b)(3)(d). Extending the recovery of transition costs far into the future, and at in inflated interest rate, is contrary to the intent of the Restructuring Act, a poor deal for ratepayers and serves to further delay the implementation of a truly deregulated, competitive electricity market

23. The Settlement is contrary to the public interest because the interest rate that would be allowed on deferral of transition costs is exorbitant. The 10.88% interest rate the Settlement would impose on the transition deferrals is much higher than NSTAR Electric's current cost of capital, and is an extraordinarily high rate by current standards. The Settlement explains that the 10.88% rate originates in the carrying charge rate approved by the Department in D.P.U./D.T.E. 96-23, Settlement § 2.9, but it is not appropriate to import a carrying charge rate from a 1996-1997

proceeding. An appropriate benchmark for a risk-free rate of return would be U.S. Treasury securities, which are currently at rates of 4.41% to 4.72% (and are roughly 1.8 percentage points below corresponding rates from 1997).

24. The Settlement is contrary to the public interest because the matter of an "arrearage forgiveness" program for low-income customers can and should be resolved in a generic proceeding already pending before the Department. This proceeding is not the appropriate proceeding to implement an "arrearage forgiveness" program for low-income customers. Under the Settlement, NSTAR shareholders would apparently pay not a single penny of the cost of new benefits afforded to low-income customers. Instead, NSTAR Electric would recover 100% of the costs, with interest, from other customers. The Compact favors appropriate protections for vulnerable customers. However, in response to a legislative mandate (St. 2005, c. 140, § 17), a generic proceeding (D.T.E. 05-86) is already underway to review arrearage management programs for low-income customers and that proceeding is the most appropriate forum for developing sound, fair, statewide policy decisions on these matters.

25. The Settlement is contrary to the public interest because it would summarily approve a merger of the NSTAR Electric companies and would therefore have the Department abdicate its right and obligation to exercise greater scrutiny of the issues surrounding a merger. The Settlement's approval of the merger of the NSTAR Electric companies and the Settlement's sanction of proposals for uniform tariffs across service areas should be rejected as inadequately protective of customers with the Commonwealth service area. Any approval of such a merger should be

conditioned on an obligation of the NSTAR companies to propose tariffs that represent an equitable allocation of costs and benefits across service territories.

26. The Settlement is contrary to the public interest because ratepayers should not be required to fund services that are already included in NSTAR Electric's duties and mission as a regulated distribution company. Removing double poles, preventing electrified manhole covers and engaging in other public safety measures are already part of the duties of an electric distribution company. Indeed, just this month, the Department issued a directive requiring distribution companies to begin implementing recommendations to bolster manhole and stray voltage safety and detection practices and to file distribution system safety plans. Letter from the Department to NSTAR Electric, et al., dated December 9, 2005, regarding Distribution System Safety and Stray Voltage and Manhole Safety Assessments. Prior to restructuring, the NSTAR companies did not have particular problems with promptly removing double poles or avoiding the electrocution of pets. Unless NSTAR can provide strong evidence that the costs of undertaking these activities are currently excluded from the distribution costs that form the basis of the current distribution rates, the ratepayers should not have to pay NSTAR a second time to do what it is already being paid to do, and legally required to do. NSTAR has been receiving revenues since restructuring that should have been adequate to operate safely and legally; if it has diverted some of those revenues to benefit shareholders, NSTAR should now return those funds to its utility operations rather than charge ratepayers for the cost of funding such services.

27. The Settlement is also contrary to the public interest because it ignores service quality matters important to residents of Cape Cod and the Islands. As noted

above, because the Capital Projects Scheduling List required by the Settlement is restricted to certain items (*i.e.*, stray voltage, double poles and manholes), Settlement § 2.25, the Settlement would not require any maintenance or upgrading of the unreliable transmission cables from the mainland to Martha's Vineyard.

28. The Settlement is contrary to the public interest and potentially contrary to law because it calls for changes to the default service procurement process that may be inconsistent with the Restructuring Act, would fail to result in lower prices and would instead inappropriately invite the distribution companies to provide products (*i.e.*, price-stabilized electricity) that should be offered by municipal aggregators and competitive suppliers. In order to ensure that default service rates adequately reflect wholesale market price signals, the Restructuring Act specifically requires that default service rates procured by a distribution company "shall include payment options with rates that remain uniform for periods of *up to* [*i.e., not exceeding*] six months." G.L. c. 164, § 1B(d) (emphasis added). Currently, NSTAR must procure 50% of its basic service supply semi-annually for one-year terms. D.T.E. 02-40-B. The Settlement would require NSTAR to procure 50% of its basic service supply for one-year terms, 25% of its load for two-year terms and 25% of its load for three-year terms. It should be noted that NSTAR has maintained in other proceedings that "the existing procurement practice (50%/1-year term) provides a good balance between price stability, rate continuity and the desire to track market prices, without imposing an administrative burden." D.T.E. 04-115, Initial Comments of NSTAR Electric, at 14 (Jan. 10, 2005). NSTAR has likewise noted that supply contract terms of more than one year would likely result in greater *price stability* for smaller customers, but that NSTAR "does *not* believe that longer term

contracts 'are likely' to produce *lower prices*." *Id.* at 17 (emphasis added). Finally, it should be the province of the competitive suppliers (through the Compact's municipal aggregation program and otherwise) to offer price-stabilized electricity products.

29. The Settlement is contrary to the public interest because it fails to address the default service adjustment tariff, which is an anomalous relic of the standard offer period that inappropriately allows Commonwealth and the other NSTAR Electric companies to stifle competition by setting below-market prices for default service and recovering uncollected costs from all ratepayers in base rates. See D.T.E. 05-89, Initial Comments of the Cape Light Comment (December 20, 2005).

30. The Settlement is contrary to the public interest because it fails to establish more permanent design of stand-by distribution charges, particularly those for customers with on-site renewable generation.

EVIDENCE TO BE PRESENTED

31. If the petition is granted, the Compact may introduce evidence regarding, among other things, (1) the real net impact on customers within the Compact's service territory of the Settlement provisions relating to distribution rates and transition charges, (2) the deficiencies of the Settlement with respect to such features as regulatory oversight, flow-through mechanisms and carve-outs; (3) the propriety of the proposed interest rate on deferred transition costs; (4) the need for additional service quality measures and capital projects of significance to the Compact; (5) the effect on the Compact's competitive supply program of changes to the default service procurement process and maintenance of the default service adjustment process; and (6) the effect on municipal renewable energy projects of

uncertainty with respect to the exemption of renewable generation from stand-by distribution charges.

PETITIONER'S REQUEST FOR RELIEF

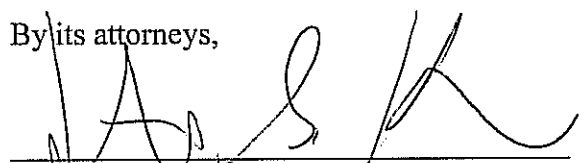
32. The Compact asks the Department to allow it to intervene and participate fully in these proceedings, in order that its interests as stated above may be fully protected.

For all the above reasons, the Compact respectfully moves that the Department allow this petition to intervene. The Compact hereby notices the appearance of the undersigned counsel.

Respectfully submitted,

THE CAPE LIGHT COMPACT

By its attorneys,



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